CONCLUSION

The Third Circuit's apparent rationale for denying fees in "close and difficult cases" is that attorney's fees are intended to "punish" the defendant, rather than making it possible for ERISA participants and beneficiaries to vindicate their contractual right to the deferred portion of their compensation. There is absolutely no authority for this rationale in the statutory language, the legislative history or its stated policy. This Court should grant the Writ and clarify once and for all - thirty-two years after ERISA's adoption - the remedial purpose underlying Congress' adoption of a fee shifting provision in ERISA cases.

Respectfully submitted,

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